IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1326 of 1989

WITH

CIVIL APPLICATION NO. 1888 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANTABEN H GADHIYA

Versus

NAGARPALIKA JETPUR

Appearance:

1. Special Civil Application No. 1326 of 1989

MR MD RANA for Petitioner No. 1-4

MR JR NANAVATI for Respondent No. 1-2

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 06/02/2003

ORAL JUDGEMENT

1. The petitioners, who have been serving as part-timers for nearly three decades with the respondent municipality, have prayed for a direction on the respondents to give them full-time status with all consequential benefits from the date of their respective appointments. They also seek a direction on the government to release the grant for this purpose to the Nagarpalika.

2. There is no dispute about the fact that these petitioners have been serving since several years as part-time employees in the municipal school. Under section 17(1)(c) of the Bombay Primary Education Act, 1947, it is for the authorised municipality to maintain an adequate staff including that of interior servants that may, in the opinion of the State Government, be necessary. The Education Committee of the municipality looks after the affairs of the municipality. It has come on record that the Education Committee passed a resolution being resolution No.6 on 5th August 1987, a copy of which is at Annexure "B" to the petition, resolving at item No.6 of the agenda that the Jetpur Nagarpalika should bear the expenses of full-time appointment of these seven employees, and the Committee in terms resolved that they should be appointed to the posts. Therefore, an important body of the municipality which was supposed to decide such questions, reached a definite decision to appoint these seven persons to the seven posts of peon in inferior service. Despite such a resolution, the municipality has slept over it and has not issued any orders in their favour, which has led to this petition.

3. Though it may not be within the powers of the Court to issue directions straightaway for appointments of such employees, it is clear from the facts of the case that the Education Committee, which looks after the affairs of the municipal schools and which was vitally concerned with the matter of appointment of inferior staff, having decided after a due deliberation that these persons who were serving since long should be appointed as full-time peons on posts which were resolved to be created, the municipality has totally ignored this resolution and has taken up a plea that, because the grant may not be released by the State Government, they are not in a financial position to bear the burden of these regular appointments.

4. Continuance of these persons as part-timers for nearly three decades would be nothing short of exploiting

them, if, despite the decision of the Education Committee to give them regular appointments as peons under the said resolution, they are being denied any such consideration by the municipality. Such an action of the municipality smacks of arbitrariness. The respondent No.1 municipality is, therefore, directed to consider issuance of appointments of these petitioners on the basis of the resolution No.6 dated 5th August 1987 of the Education Committee, a copy of which is at Annexure "B" to the petition, and take an appropriate decision in the matter of issuance of necessary orders on the basis of such resolution. This may be done within two months from the date of service of this order. Rule is made absolute accordingly with no order as to costs.

No orders are required to be made on the Civil Application No. 1888 of 1993 in view of this order made in the main petition.

[R.K.ABICHANDANI, J.]

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